

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD JASON SHEPHERD,

Petitioner,

v.

BRIAN HAWS, Warden,

Respondent.

Case No. CV 08-2669-ABC (JCR)

MEMORANDUM AND ORDER
DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS WITH
LEAVE TO AMEND

I. PROCEEDINGS

On April 23, 2008, Richard Jason Shepherd (“Petitioner”), proceeding with counsel, filed a “Notice of Motion and Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2254; Memorandum of Points and Authorities in Support of Motion” (“Motion to Vacate”), which the Court construes as a Petition for Writ of Habeas Corpus (“Petition”). Petitioner, however, has failed to file his Petition on the Court-approved Form CV-69. For the reasons set forth below, the Petition is dismissed with leave to amend.

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1 **II. DISCUSSION**

2 **A. The Court's Duty To Screen Habeas Petitions**

3 The habeas corpus petition is the proper action for state prisoners who
 4 challenge state court convictions, state court sentences, or other matters affecting
 5 the length of state prison confinement. *See* 28 U.S.C. §§ 2241, 2254. “[T]he
 6 essence of habeas corpus is an attack by a person in state custody upon the legality
 7 of that custody, and . . . the traditional function of the writ is to secure release from
 8 illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Burnett v.*
 9 *Lampert*, 432 F.3d 996, 999 (9th Cir. 2005).

10 This Court may entertain a habeas application on behalf of a person who is
 11 in custody pursuant to a state court judgment, and in violation of the Constitution,
 12 laws, or treaties of the United States. 28 U.S.C. § 2254(a). Pursuant to Rule 4 of
 13 the Rules Governing Section 2254 Cases in the United States District Courts
 14 (“Section 2254 Rules”), “a judge under the court’s assignment procedure” is
 15 required to examine the petition promptly and “[i]f it plainly appears from the
 16 petition and any attached exhibits that the petitioner is not entitled to relief in the
 17 district court, the judge must dismiss the petition and direct the clerk to notify the
 18 petitioner.” 28 U.S.C. § 2254 R. 4.

19 **B. Petitioner Failed to File the Required Court-** 20 **Approved Form CV-69.**

21 Pursuant to Rule 2(d) of the Section 2254 Rules, a habeas petition “must
 22 substantially follow either the form appended to these rules or a form prescribed by
 23 a local district-court rule.” 28 U.S.C. § 2254 R. 2(d). Local Rule 83-16.1 of this
 24 Court expressly provides that a habeas petition “shall be submitted on the forms
 25 approved and supplied by the Court.” C.D. Cal. R. 83-16.1. This Court’s
 26 approved form for state habeas petitions, Form CV-69, contains detailed
 27 instructions on how the Court-approved form is to be completed. These
 instructions are the functional equivalent of court orders concerning the manner in

1 which the habeas petition must be completed by the Petitioner. Therefore, strict
2 compliance with the instructions in the approved petition form, including those
3 relating to presentation of the grounds for relief, is mandated unless a written
4 waiver is first obtained from this Court.

5 In this case, Petitioner has filed a Petition without using a properly
6 completed Form CV-69. Petitioner has not obtained a written waiver from this
7 Court to file his "Motion to Vacate" in lieu of filing the required Form CV-69.
8 Accordingly, the Petition is dismissed and Petitioner is given the opportunity to file
9 an amended petition in compliance with this Order. If Petitioner files an amended
10 petition, he must provide the information requested on the Court-approved form
11 with regard to all direct and collateral appeals of his conviction.

12 13 **III. ORDERS**

14 IT IS THEREFORE ORDERED as follows:

- 15 1. The Petition is dismissed with leave to amend.
- 16 2. On or before **June 23, 2008**, to the extent Petitioner wishes to
17 continue to pursue this action, he shall file a First Amended Petition, on the
18 approved Central District habeas form. The amended petition should reflect the
19 same case number "CV 08-2669-ABC (JCR)," be clearly labeled "First Amended
20 Petition," and must be complete in itself and may not incorporate by reference any
21 part of the original Petition.
- 22 3. If Petitioner does not comply with these requirements, the Magistrate
23 Judge will recommend that this action be dismissed without prejudice for failure to
24 prosecute and failure to comply with court orders. *See* Fed. R. Civ. P. 41(b).

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4. The Clerk shall serve this Memorandum and Order on Petitioner and his counsel, together with a blank copy of Form CV-69.

IT IS SO ORDERED.

DATED: June 13, 2008

John C. Rayburn, Jr.
JOHN C. RAYBURN
UNITED STATES MAGISTRATE JUDGE